

Application No. 10/5330,464

REMARKS

In reply to the Office Action mailed December 19, 2005, Applicant respectfully traverses the Examiner's requirement for restriction and, for reasons now explained, the Examiner is requested to remove the requirement.

Claims 1 – 24 remain pending. The Examiner has placed the claims in four groups and states that the inventions of the four groups do not relate a single general inventive concept because they lack the same or corresponding special technical features ...” The examiner further notes that “special features” means features which “define a contribution which each of the inventions as considered as a whole, makes over the prior art.

In the Office Action the examiner incorrectly concluded that Groups II – IV have differing technical features. Although the Examiner has identified specific features recited among claims of varying scope, it *must* be noted by the examiner that claim 22 is generic to all of the claims which have been placed in three separate groups!

The Examiner has incorrectly related the Lu reference to the claims placed in Groups II – IV. The device of Lu does not and cannot show the combination of features present in the claims of Groups II – IV because the reference expressly “relates to a system and device for concurrent performance of multiple discrete analysis [sic] on a common test fluid ...” See Col. 1, lines 5 – 11.

To more clearly illustrate that the reference is addressing multiple different assays, see Col 3, lines 9 – 13, which states that the testing device of the Lu patent “need have the ability to conduct the prescribed panel of tests ... so as to afford availability of the test results for each of the assays within a precise time frame.”

In contrast to the Lu reference, Applicant's claimed devices do not at all relate to multiple assays of different chemicals. Rather, for example, the device of claim 2 includes capture zones

“on different membranes having different threshold levels of response to the chemical. [Emphasis added.]”

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As a further example, the device of claim 7 is for "analyzing a target analyte" with each capture zone

"positioned to provide a different sensitivity response to the presence of analyte in the source."

The language of claim 7 cannot be construed to read on a device which monitors different analytes because the claim expressly requires different sensitivities to the presence of "a target analyte." Furthermore, the Lu reference does not at all disclose or suggest "a different sensitivity response" among different capture zones.

Other device claims are similarly distinguished.

From the above, it is clear that Applicant's claims and the disclosure of the Lu reference are directed to different inventions and are simply not consistent with one another.

Having demonstrated that the Lu reference does not show the Applicant's invention, it can no longer be said that the method of Group 1 lacks unity with claims in the other groups. Rather, based on the criteria cited by the Examiner (PCT Rules 13.1 et seq.) the examiner must now agree that all of the claims do form a general inventive concept. That is, the device claims do share a common technical feature (see again generic claim 22) and the claimed devices are specific to performing the method set forth in the claims of Group 1.

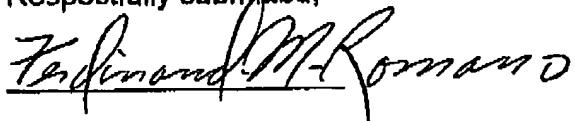
There is no basis to establish that the devices are used for any other method than that claimed by the Applicant, and there is no basis to establish that the claimed method can be performed on any device other than a device covered by Applicant's claims.

It is believed that a search of each of the claims would require searching in the same classes and none of the groups of claims should be searched in fewer or different classes than the claims placed in another group. Nor does it appear that a search of claims in different groups would be burdensome to the examiner. In fact, a search of all of the claims at once should add to the quality of the examination.

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For all of these reasons the Restriction Requirement is in error and must be withdrawn. For the purpose of providing a complete response to the restriction requirement, Applicant elects with traverse the claims of Group I. It is hoped that the examiner is persuaded by the above argument and will allow all of the claims to be examined in this application.

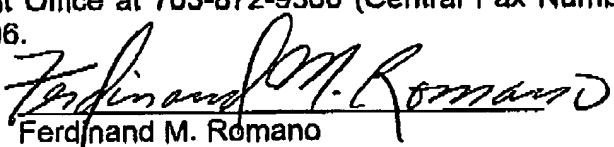
Respectfully submitted,



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CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY that this Response To Restriction Requirement is being FAXED to the U.S. Patent Office at 703-872-9306 (Central Fax Number) on this 18th day of January, 2006.


Ferdinand M. Romano